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Burton, Kelley J. and McNamara, Judith (2009) *Assessing reflection skills in law using criterion-referenced assessment*. Legal Education Review, 19(1-2). pp. 171-188.

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ASSESSING REFLECTION SKILLS IN LAW USING CRITERION-REFERENCED ASSESSMENT

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I INTRODUCTION

According to Donald Schön, a reflective practitioner is not merely skilful and knowledgeable, but is also one who uses intuition, insight and artistry in his or her practice.¹ Schön suggests that reflective practice can assist professionals to deal with the 'indeterminate zones' of professional work.² Universities can assist students to become reflective practitioners by encouraging them to engage in reflective practice as part of their education.

The ability to engage in reflective practice is an important skill for legal practitioners who are faced with the constant stressors of legal practice.³ A recent Australian study found a high incidence of depression and substance use amongst members of the Australian legal profession.⁴ These findings echo similar studies in the United States over the last 20 years which have found that lawyers suffer significant rates of divorce, depression, anxiety, mental illness, suicide, substance abuse and poor physical health.⁵ Several commentators suggest that law schools should respond to this crisis in the legal profession by assisting students to develop their emotional intelligence and by moving away from the traditional

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¹ Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (1983).

² Donald Schön, *Educating the Reflective Practitioner* (1987) 12.

³ See generally Lil Vrklevski, 'Criminal Lawyers Face Higher Trauma Risk' (2008) 4 *Proctor* 33.

⁴ Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (2009) Brain & Mind Research Institute, the University of Sydney, viii <<http://cald.anu.edu.au/docs/Law%20Report%20Website%20version%204%20May%2009.pdf>> at 23 December 2009.

⁵ Colin James, 'Seeing Things as We Are: Emotional Intelligence and Clinical Legal Education' (2005) *International Journal of Clinical Legal Education* 123, 124; American Bar Association, *Commission on Lawyer Assistance Programs* <<http://www.abanet.org/legalservices/colap/>> at 23 December 2009.

emphasis on intellect above other human qualities.⁶ Encouraging students to become reflective practitioners is one way of addressing this concern.

Reflective practice and experiential learning should be embraced in the teaching of legal skills and values.⁷ Reflective practice is integral to lifelong learning⁸ and it is essential that law graduates become lifelong learners so that they have the ability to transfer knowledge to new problems and contexts.⁹ An ability to engage in reflective practice is therefore an important skill for lawyers because it can provide the means for lawyers to apply their legal knowledge and skills to new situations and to cope with the day-to-day moral, ethical and personal dilemmas that arise in the practice of law.

Reflective practice has been identified as a desirable capability of law graduates;¹⁰ however, despite this recognition of the importance of reflective practice, reflective skills (along with other generic skills, attitudes and values)¹¹ are often not assessed in a traditional legal education.¹² This is in part because law schools tend to adopt a 'technical-rational' style of education that focuses on analytical skills and which is not conducive to the development of reflective skills.¹³ The reluctance to rely on reflective assessment can also be attributed to a perception that the assessment of reflective practice is challenging. This paper argues that reflective practice can and should be taught, and summatively assessed, in law schools.

This paper focuses on the assessment of reflective practice, an issue that has not been fully explored within legal education literature. While the issue of how reflective practice should be taught is one that

⁶ Marjorie Silver, 'Therapeutic Jurisprudence/Preventive Law and Law Teaching: Emotional Intelligence and Legal Education' (1999) *Psychology, Public Policy and Law* 1173, 1174; James, above n 5, 124.

⁷ American Bar Association: Section on Legal Education and Admissions to the Bar, *An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) 243, 331.

⁸ Marie E Donaghy and Kate Morss, 'Guided Reflection: A Framework to Facilitate and Assess Reflective Practice within the Discipline of Physiotherapy' (2000) 16 *Physiotherapy Theory and Practice* 3, 13.

⁹ Alice Thomas, 'Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy' (2000) 6 *Widener Law Review* 49, 97.

¹⁰ Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 207, 216.

¹¹ Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, 541.

¹² According to Johnstone and Vignaendra, only just over 10 per cent of students indicated that reflective journals were used regularly as assessment by their law school: see Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: Australian Universities Teaching Committee* (2003) app 3 <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf> at 23 December 2009.

¹³ Caroline Maughan, 'Problem Solving through Reflective Practice: The Oxygen of Expertise or Just Swamp Gas?' (1996) *Web Journal of Legal Issues* <<http://webjcli.ncl.ac.uk/1996/issue2/maughan2.html>> at 23 December 2009.

requires careful consideration, it is beyond the scope of this paper to consider both the teaching and the assessment of reflective practice. Part II of this paper conceptualises reflective practice, and Part III explores the benefits of reflective practice in legal education and the use of reflective writing to assess experiential learning in a legal context. Part IV considers the diverse issues that arise in assessing reflective practice and whether there is an objective method for assessing reflection. Part V of the paper examines the assessment of reflective practice in the context of an exemplar undergraduate law subject that uses a reflective report to assess students' experiential learning during a court visit.¹⁴ Finally, Part VI offers a rubric to facilitate criterion-referenced assessment of reflective practice and thereby provides a framework for assessing reflection skills. It is suggested that the rubric is transferable not only to other law subjects but also to subjects in other disciplines.

II CONCEPTUALISATION OF REFLECTION

According to Jennifer Moon, a leading commentator on reflection and experiential learning from the United Kingdom:

Reflection is a form of mental processing — like a form of thinking — that we may use to fulfil a purpose or to achieve some anticipated outcome or we may simply 'be reflective' and then an outcome can be unexpected. Reflection is applied to relatively complicated, ill-structured ideas for which there is no obvious solution and is largely based on the further processing of knowledge and understanding that we already possess.¹⁵

Reflection becomes critical reflection when it extends to evaluating what is being reflected upon.¹⁶ Mezirow further defines 'critical self-reflection of an assumption' as involving 'critique of a premise upon which the learner has defined a problem (eg, "a woman's place is in the home," so I must deny myself a career that I would love)¹⁷ and argues that '[s]ignificant personal and social transformations may result from this kind of reflection'.¹⁸ At its highest level, reflective practice involves students or practitioners engaging in this type of critical self-reflection so that they can

¹⁴ While it is not suggested that engagement in reflective practice through a court report alone is likely to contribute significantly to the development of lifelong skills, it is a useful example of how reflective practice can be assessed to embed reflective practice in the law curriculum.

¹⁵ Jennifer A Moon, *A Handbook of Reflective and Experiential Learning* (2004) 82.

¹⁶ Jack Mezirow, 'On Critical Reflection' (1998) 48(3) *Adult Education Quarterly* 185, 185.

¹⁷ Ibid 185.

¹⁸ Ibid 186.

unpack and question the assumptions and values which underlie their judgements and actions.

The term 'reflection' is generally used to refer to the thinking process whereas 'reflective practice' is a formal process, the outputs of which are evidence of reflection. Reflective practice may include a range of activities such as learning journals, portfolios, diaries, logs, reflective reports and notebooks.¹⁹ The notions of thinking and developing understanding are central to Moon's conception of reflection. In the context of legal education, the aim of reflective practice should be to encourage students to engage in autonomous learning with a view to developing their understanding in the context of their previous experience, knowledge, values and beliefs.²⁰

Moon's definition of reflection refers to the fact that the outcome of reflection may be unexpected. Where this is the case, the assessment of reflection is challenging as learning outcomes need to be determined before the assessment item is completed by students. Correspondingly, reflective learning emerges during an experience and as a result it is difficult to plan its learning outcomes in advance.²¹ Perhaps Moon's reference to reflection being 'ill-structured' is unnecessarily negative, and 'unplanned' or 'unstructured' may be better terms. The fact that reflection is applied to unplanned experiences does not mean that the learning outcomes are poor, although this may add to the challenge in assessment.

Moon's reference to reflecting on 'complicated ... ideas' should not inhibit an academic from asking students to reflect on conventional issues, because what is required is for the student to apply their own experience, knowledge, values and beliefs to the conventional experience in order to analyse it more thoroughly and critically than they would if they were not required to engage in reflective practice. The complicated ideas stem from the student challenging their own beliefs and furthering their own understanding. Moon's definition also refers to 'ideas for which there is no obvious solution'. Considering a range of solutions is important because reflection is most useful where it is applied to situations for which there are no obvious solutions.²² As suggested by Guy Claxton, 'learning to learn ... is getting better at knowing when, how and what to do when you don't know what to do'.²³ The reference to considering a range of solutions or options highlights another dimension of thinking — creative thinking — which is situated within reflective thinking.

¹⁹ Moon, above n 15, 159.

²⁰ For a discussion of the use of reflective practice in legal education see Karen Hinett, *Developing Reflective Practice in Legal Education* (2002) <<http://www.ukcle.ac.uk/resources/reflection/drp.pdf>> at 23 December 2009.

²¹ Tom Bournier, 'Assessing Reflective Learning' (2003) 45 *Education and Training Journal* 267, 268.

²² Moon, above n 15.

²³ Guy Claxton, *Wise up: The Challenge of Lifelong Learning* (1999) 18.

Reflection requires a person to challenge their previous understanding, review and explore an experience, and create and clarify their understanding.²⁴ Reflection goes beyond merely considering what has happened — it requires an assessment of the assumptions underlying one's beliefs.²⁵ According to Tom Bourner, 'reflective learning is not what happens to a student, it is what the student does with what has happened'.²⁶ Being able to question underlying beliefs and develop understanding is vital to students and it has been said that reflective practice is integral to lifelong learning.²⁷ The relationship between reflection and lifelong learning is emphasised by Mezirow who states that 'learning to think for oneself involves becoming critically reflective of assumptions and participating in discourse to validate beliefs, intentions, values and feelings'.²⁸ Reflective practice is closely linked with experiential learning, which is discussed further in Part III below.

The key themes that arise from the literature relating to reflective practice are that reflection requires purposeful thinking and contextualising of what is already known,²⁹ relating learning to existing knowledge, values and beliefs,³⁰ considering a range of solutions or options³¹ and developing one's previous knowledge, values and beliefs.³² These themes should be incorporated in criteria for assessment of reflection in legal education.

III THE ROLE AND BENEFITS OF EXPERIENTIAL LEARNING

As has been argued above, it is important to encourage law students to engage in reflective practice in order to develop their lifelong learning skills and to become effective reflective practitioners. It is also important for law students to reflect on the law and ways in which it can be improved.³³ Given the links between reflective practice and experiential education (explained below), reflective writing is an effective means of assessing experiential learning. In engaging in reflective practice in relation to their experiences, students are better

²⁴ Monica Kennison and Shirley Misselwitz, 'Evaluating Reflective Writing for Appropriateness, Fairness and Consistency' (2002) 23 *Nursing Education Perspectives* 238, 239.

²⁵ Frances Wong et al, 'Assessing the Level of Student Reflection from Reflective Journals' (1995) 22 *Journal of Advanced Nursing* 48, 50.

²⁶ Bourner, above n 21, 269.

²⁷ Donaghy and Morss, above n 8, 13.

²⁸ Mezirow, above n 16.

²⁹ Kennison and Misselwitz, above n 24.

³⁰ Hinett, above n 20; Donaghy and Morss, above n 8.

³¹ Moon, above n 15; Claxton, above n 23.

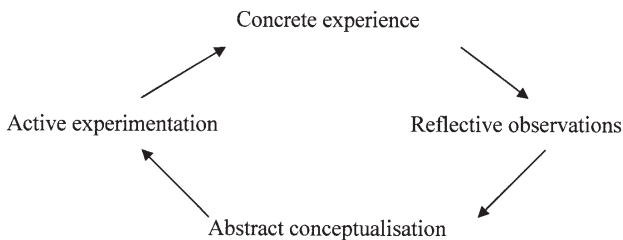
³² Donaghy and Morss, above n 8; Kennison and Misselwitz, above n 24.

³³ Anita Walsh, 'An Exploration of Biggs' Constructive Alignment in the Context of Work-Based Learning' (2007) 32(1) *Assessment & Evaluation in Higher Education* 79.

able to understand the complexities of learning situations, and the impact of their previous experience, knowledge, beliefs and values.

Experiential learning is propounded by David Kolb who defines learning as the process whereby knowledge is created through the transformation of experience. Kolb's cyclical model of learning is represented in Figure 1 below. The cycle of learning is fundamental to lifelong learning because it enables learners to learn how to learn.³⁴ The learner may enter the cycle at any stage, but must follow the cycle sequentially. For example, the learner might enter the cycle at the abstract conceptualisation stage (by considering theoretical principles) and then undertake an experience which relates to these principles before reflecting upon the experience.³⁵ Experiential learning may differ from reflection because reflection may simply involve an internal experience,³⁶ whereas experiential learning necessarily involves a concrete experience upon which the reflection is based.

Figure 1: Kolb's Experiential Learning Cycle



Various definitions of experiential learning have been offered by commentators. Lewis and Williams, for example, offer the following definition:

In its simplest form, experiential learning means learning from experience or learning by doing. Experiential education first immerses adult learners in an experience and then encourages reflection about the experience to develop new skills, new attitudes, or new ways of thinking.³⁷

The multitude of available definitions can be synthesised into learning based on experience, building upon previous understanding, and reflection.³⁸

Experiential learning courses in law can help students adjust to their roles as professionals; become better problem-solvers; develop interpersonal and professional skills; and learn how to learn from

³⁴ David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (1984).

³⁵ Sally Kift, 'Lawyering Skills: Finding their Place in Legal Education' (1997) 8(1) *Legal Education Review* 43, 66.

³⁶ Moon, above n 15, 10.

³⁷ Linda Lewis and Carol Williams, 'Experiential Learning: Past and Present' (1994) 62 *New Directions for Adult and Continuing Education* 5, 5.

³⁸ Moon, above n 15, 108, 110.

experience.³⁹ In order to fully appreciate the workings of the legal system, law students need to have some practical experience of it. Experiential learning can also generate passion and provide context for law students.⁴⁰ It has also been suggested that experiential learning is the most effective way to teach practical legal skills.⁴¹ In particular, experiential learning is vital to developing communications skills, which are essential for law students.⁴²

Kolb's experiential learning cycle is applied to the learning of legal skills by Sally Kift.⁴³ Kift argues that '[t]he importance of planning learning activities that incorporate each stage of the learning cycle cannot be overstated.'⁴⁴ Experiential learning situations for law students may be formal or informal and include court visits, advocacy exercises, role plays, mootings, prison visits, work experience at legal offices and formal internships. In the context of practical experiences — such as work experience and internships — experiential learning, including engagement in reflective practice, is central because it turns what would otherwise be mere work experience into a genuine learning experience.⁴⁵

The benefits of reflective practice in the context of experiential learning are many. It is the ability to reflect that characterises those who can learn from their experience.⁴⁶ Students benefit from developing fresh perspectives and changing behaviour,⁴⁷ readiness for application and commitment to action'.⁴⁸ Embedding reflective practice in a subject also improves a student's ability to recognise the need for and implement change.⁴⁹ In summary, '[r]eflection should help learners make meaning out of content applied in a specific practice situation and better understand the complexity of how one acts and might act in a future situation'.⁵⁰

³⁹ Roy Stuckey, *Best Practices for Legal Education: A Vision and a Road Map* (2007).

⁴⁰ Deborah Maranville, 'Infusing Passion and Context into the Traditional Law Curriculum through Experimental Learning' (2001) *Journal of Legal Education* 51, 58.

⁴¹ Kift, above n 35, 43.

⁴² Mezirow, above n 16. Mezirow argues that engaging in critical reflection is essential to understanding communication.

⁴³ Kift, above n 35, 43–73.

⁴⁴ *Ibid* 66.

⁴⁵ Stuckey, above n 39, 165.

⁴⁶ David Boud, Rosemary Keogh and David Walker, 'Introduction: What is Reflection in Learning?' in David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (1985) 9, 11.

⁴⁷ Wong et al, above n 25, 50.

⁴⁸ Janet Hargreaves, 'So How Do You Feel about That? Assessing Reflecting Practice' (2004) 24 *Nurse Education Today* 196, 198.

⁴⁹ David Stein, *Teaching Critical Reflection: Myths and Realities No. 7* (2000) ERIC Clearinghouse on Adult, Career, and Vocational Education, 3, 4 <http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED445256&ERICExtSearch_SearchType_0=no&accno=ED445256> at 23 December 2009.

⁵⁰ *Ibid* 4.

Reflective practice not only enhances students' learning experiences, it is also an attribute that will assist them in becoming lifelong learners. Students who are able to engage in reflective practice are more likely to be able to accept and make sense of critical feedback received from their tutors, mentors and supervisors.⁵¹ They are also more likely to become reflective practitioners who are more able to learn from experience; cope with uncertainty and anxiety; exercise sound judgement; assess their own skills and abilities; develop career goals and plans and implement strategies to achieve those goals; accept critical feedback; and continue to improve skills and aptitudes.⁵²

IV SHOULD REFLECTION BE SUMMATIVELY ASSESSED?

While recognising the benefits of reflection, some assessors dismiss the idea of embedding and/or assessing reflective practice because it is complex and difficult.⁵³ Some acknowledge the high importance of reflection, but choose not to summatively assess reflective practice at all because of the complexity.⁵⁴ Such an approach undervalues reflection because students are unlikely to pay close attention to reflection unless it is assessed.⁵⁵ If reflective practice is to be valued highly, particularly in the context of legal education where students are highly competitive and motivated by grades, it must be summatively assessed. Assessment also motivates students to focus their learning, provides students with feedback on their understanding, and achieves quality assurance in the sense that it confirms the learning outcomes.⁵⁶ Assessment is an important part of the learning process.⁵⁷

However, in addition to the difficulty in assessing reflective practice, there is an argument that summative assessment may interfere with the genuineness of students' reflections; it can make students 'reluctant to express their innermost thoughts and feelings, seeing this as an "invasion of privacy", and ... inclined to write what they think the assessor wants to read'.⁵⁸ Writing in such an assessment-driven manner defeats the value of reflection and may

⁵¹ Hinett refers to the relational aspects of reflective practice in helping students to make sense of feedback in the context of their own experience: Hinett above n 20, 1.

⁵² See generally Judith McNamara and Rachael Field, 'Designing for Reflective Practice in Legal Education' (2007) 2(1) *Journal of Learning Design* 66, 68.

⁵³ Jennifer Sumsion, 'Reflection: Can we Assess it? Should we Assess it?' (1996) 21 *Assessment and Evaluation in Higher Education* 121, 123.

⁵⁴ Ibid.

⁵⁵ Moon, above n 15, 150.

⁵⁶ David Boud and Nancy Falchikov, *Rethinking Assessment in Higher Education: Learning for the Longer Term* (2007) 15.

⁵⁷ Ibid.

⁵⁸ Mirjam McMullan et al, 'Portfolios and Assessment of Competence: A Review of the Literature' (2003) 41 *Journal of Advanced Nursing* 283, 291.

cause students to articulate beliefs that are inconsistent with their actual thoughts and feelings.⁵⁹ Such a perception may cause students to merely write positive comments about their strengths; when, in fact, weaknesses deserve the same, if not more, attention. It is suggested that this issue need not deter law teachers from assessing reflective practice. It can be addressed by explaining to students the value of reflective practice in addressing personal weaknesses and by drafting appropriate criteria that encourage students to address personal weaknesses in their reflection.

V HOW SHOULD REFLECTION BE ASSESSED?

Not only is it desirable to summatively assess reflection, it is also possible to assess it in a way which is both rigorous and objective. This section examines three fundamental issues in assessing reflection: whether to assess the product and/or the process; how to establish objective criteria; and how to establish appropriate performance descriptors. Each of these issues is explored in turn.

A Product and/or Process

The first step in assessing reflection is to determine what is being assessed. In some cases, reflection is used as a means of enabling student learning; however, what is being assessed may be merely the product of that learning rather than the reflective process itself. This distinction is drawn out by Moon:

It is important to be clear whether learners are being asked to use reflective writing as a means of generating knowledge (developing a 'product' of learning) or in order to learn the skill of being reflective (learning to use the process of reflection or reflective practice). In many cases, both process and product are important. The emphasis (process [and/]or product) of the learning will need to be represented in the criteria used for any form of assessment task.⁶⁰

This article seeks to unpack the process of reflection into criteria for assessment which may be transferable across disciplines. Consistent with this approach, it is what a student does with the content, rather than the content itself, that is vital to reflective practice.⁶¹ Sumsion questions the value to be placed on the process of reflecting compared to the product, but does not provide any advice for assessors on how to weight the two factors.⁶² While there is probably no single solution to this, it is suggested that an answer lies in the designated learning outcomes for the reflective task. Where the ability to engage in reflective practice is a desired attribute (as in

⁵⁹ Hargreaves, above n 48, 199; Boud and Falchikov, above n 56, 15.

⁶⁰ Moon, above n 15, 137.

⁶¹ Bourner, above n 21, 269.

⁶² Sumsion, above n 53, 123.

the case of law students) then it is important to assess the reflective process and not just the outcome.

While journals and portfolios are promoted as traditional vehicles for assessing reflection, legal educators should steer away from using written communication as the sole method for demonstrating reflection. The importance of engaging in the process of reflection (rather than on the written product) should be emphasised to students and, accordingly, other methods of reflective assessment should be considered. Such alternative methods of assessment include videos, blogs, oral presentations, discussion forums and mind maps, some of which are not written forms of assessment.⁶³

B *Establishing Objective Criteria*

Assuming that both the product and process of reflection are assessed, it is vital to establish objective criteria. Assessing reflective practice is difficult because only the person who does the reflection knows how much they have learned, and because it is challenging to determine the extent of learning utilising an 'independent' or 'external' standard.⁶⁴ Further, emotion is integral to reflection, and this makes assessing reflective practice taxing.⁶⁵ However, assessing reflective practice is not impossible, and it should not be abandoned as an illegitimate form of assessment merely because it is difficult. The key is to design objective criteria. These criteria should be provided to students in advance, a recommendation consistent with the literature on criterion-referenced assessment.⁶⁶ The criteria should be based on a shared sense of the concept of reflection between legal educators and students.

Various commentators have suggested criteria for the assessment of reflective practice. In the context of a reflective diary, Jenny Routledge et al refer to 'reflective account' and suggest that the marker focus upon:

- 1 a reflection on the initial statement of intent in the light of experience;
- 2 how personal learning, values and theories have developed and changed;
- 3 insights and understandings gained or altered;
- 4 implications for future practice; and
- 5 future learning needs and strategies to facilitate these needs.⁶⁷

⁶³ See generally Chris Morgan, *The Student Assessment Handbook: New Directions in Traditional and Online Assessment* (2004) 164, 194–5.

⁶⁴ Bourner, above n 21, 268.

⁶⁵ Moon, above n 15, 88.

⁶⁶ Morgan, above n 63, 194–5.

⁶⁷ Jenny Routledge et al, 'Reflection on the Development of a Reflective Assessment' (1997) 19 *Medical Teacher* 122, 124.

There is some circularity in these factors because the first consideration specifically refers to 'reflection'. The remaining considerations however unpack reflection further and raise two main themes. The first theme is how the experience informs (and may change) future practice, which accords with the view of developing understanding evident in the conceptions of reflections, discussed above. The second theme is to improve weaknesses. These two broad-brush themes are also evident in the work of Francis Wong et al, discussed below, but those authors adopt a more sophisticated approach by distinguishing students who are mere reflectors from those who are critical reflectors.⁶⁸

Kathryn Pavlovich has suggested marking criteria for reflective writing that spans across both product and process and includes:

exploring of individual learning process (journey of learning); process of learning; examples and applications (appropriateness and relevance); depth of probing of ideas; scope of content covered (classes, readings, experiences); richness of engagement; [and] overall synthesis.⁶⁹

As discussed above, the criteria for the assessment of reflection should encourage students to identify and address personal weaknesses. Exposing difficult personal experiences lies at the heart of reflection skills.⁷⁰ Assessing reflection skills is different to assessing other skills because reflection:

involves a focus on uncertainty, on perplexing events, of exploration without necessarily knowing where it will lead. It is in the interests of ... [student] learning for them to express their doubts, to reveal their lack of understanding and to focus on what they don't know.⁷¹

The assessment of reflection skills based solely on the criterion of written communication may be inaccurate.⁷² The relationship between quality of writing and quality of reflection skills is often blurred in such assessments.⁷³ A student may have excellent communication skills but may not be able to engage in reflection, while another student may be able to engage in reflection but not be able to write about it in an appropriate manner. Consequently, assessors need to go beyond assessing the quality of written communication, and should focus specifically on the key themes of reflection identified above, such as: purposeful thinking and contextualising of what is already known; relating learning to existing knowledge values and beliefs;

⁶⁸ Wong et al, above n 25, 50.

⁶⁹ Kathryn Pavlovich, 'The Development of Reflective Practice through Student Journals' (2007) 26(3) *Higher Education Research and Development* 281, 288.

⁷⁰ Barbel Pee et al, 'Appraising and Assessing Reflection in Students' Writing on a Structured Worksheet' (2002) 36 *Medical Education* 575, 583.

⁷¹ David Boud, 'Using Journal Writing to Enhance Reflective Practice' (2001) 90 *New Directions in Adult and Continuing Education* 9, 17.

⁷² Pee et al, above n 70, 583.

⁷³ Sumsion, above n 53, 124.

considering a range of solutions or options; and developing one's knowledge, values and beliefs.

C Establishing Appropriate Performance Descriptors

Having considered the appropriate criteria for assessment of reflective practice, it is now necessary to consider appropriate performance descriptors to be met by students in relation to the criteria.

Wong et al distinguish between non-reflectors, reflectors and critical reflectors.⁷⁴ The non-reflectors discuss what happened, use a descriptive and impersonal style of writing, make assumptions without testing them, do not appreciate contextual considerations, and present views without supporting them with literature or experience.⁷⁵ Analysis is integral to critical reflection and descriptive writing demonstrates 'poor reflective learning'.⁷⁶ Descriptive writing reports what happened, and descriptive reflection reports not only what happened, but why it happened.⁷⁷ In contrast to non-reflectors, reflectors make connections between fresh and previous knowledge, adapt prior knowledge to new scenarios, and are insightful.⁷⁸ Critical reflectors go a step further than the reflectors and are able to validate assumptions made, demonstrate an awareness of the contextual considerations, use literature and previous knowledge to pursue different options, address issues by using a diverse range of perspectives and do not choose to simply follow practices because of habit.⁷⁹

The characteristics of reflectors and critical reflectors correlate to the key themes of reflection including purposeful thinking and contextualising what is already known, considering a range of solutions or options, and developing understanding. All of these themes are at the heart of reflection and have been incorporated in the rubric below.

Using description as the sole means for separating reflectors from non-reflectors is not always straightforward because the distinction between description and reflection is not clear-cut. Rather than clustering reflective writing into the three categories identified by Wong et al, an alternative approach is to use four levels of reflective writing as performance indicators: descriptive writing, descriptive reflection, dialogic reflection and critical reflection.⁸⁰ Each level

⁷⁴ Wong et al, above n 25, 53–4.

⁷⁵ Ibid 54.

⁷⁶ Bourner, above n 21, 270; Stein, above n 49.

⁷⁷ Pee et al, above n 70, 578; Moon, above n 15, 137.

⁷⁸ Wong et al, above n 25, 54.

⁷⁹ Pee et al, above n 70, 578.

⁸⁰ Moon, above n 15, 97; Wong et al, above n 25, 53–4.

incrementally develops reflective writing, with critical reflection being the highest level and descriptive writing being the lowest level in the hierarchy. Descriptive writing is characterised by a description of events without any discussion of alternative viewpoints or analysis.⁸¹ Descriptive reflection goes beyond descriptive writing by providing a discussion of alternative perspectives, but it generally considers the issues from only one perspective. Dialogic reflection shows a progression from descriptive writing to analytical writing and reveals alternative ways of judging or explaining events, but may also show inconsistent reflections.⁸² Dialogic reflectors mull over their reasons and options internally.⁸³ Critical reflection transcends these levels by including not only an analytical discussion, but also a ‘contextual awareness’;⁸⁴ that is, an appreciation of historical, social and political perspectives and underpinning assumptions.⁸⁵ Thus, a critical reflector goes beyond their emotional past and personal perspective, and considers the issues in context.

Another possible factor to take into account in developing performance criteria are the three aspects of critical reflection: dispositional, contextual and experiential.⁸⁶ Dispositional reflection is based on the student’s values and characteristics, and how they prioritise them.⁸⁷ The importance of context to reflection has already been noted; in particular, gender and race may impact on the experience.⁸⁸ Experiential reflection involves recounting the experience and solving inconsistencies between the reality and expectations.⁸⁹

Resource 1, below, sets out 12 questions developed by Bourner that can be used as tools for setting and assessing reflective writing. These questions are valuable because they can be applied to most, if not all, disciplines and learning contexts.⁹⁰ One of the criticisms attached to reflective assessment is that it merely reinforces weaknesses and does not pave a way forward for development.⁹¹ Resource 1 specifically overcomes this dilemma by asking the reflector, at question 7, if they can identify any opportunities for development.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Mezirow, above n 16.

⁸⁵ Ibid; Stein, above n 49, 3.

⁸⁶ Stein, above n 49, 3.

⁸⁷ Ibid.

⁸⁸ Pee et al, above n 70, 578.

⁸⁹ Stein, above n 49, 3.

⁹⁰ Bourner, above n 21, 271.

⁹¹ McMullan et al, above n 58, 291.

Resource 1: Questions for Reflective Thinking

- 1 What happened that most surprised you?
- 2 What patterns can you recognise in your experience?
- 3 What was the most fulfilling part of it? And the least fulfilling part of it? What does that suggest to you about your values?
- 4 What happened that contradicted your prior beliefs? What happened that confirmed your prior beliefs?
- 5 How do you feel about that experience now compared with how you felt about it at the time?
- 6 What does the experience suggest to you about your strengths?
- 7 What does the experience suggest to you about your weaknesses and opportunities for development?
- 8 How else could you view that experience?
- 9 What did you learn from that experience about how you react?
- 10 What other options did you have at the time?
- 11 Is there anything about the experience that was familiar to you?
- 12 What might you do differently as a result of that experience and your reflections on it? What actions do your reflections lead you to?

Reflective learners take a deep or active learning approach by asking questions of the experience to develop their own understanding, whereas unreflective learners take the experience at face value and thus engage in surface or passive learning.⁹² The questions in Resource 1 are designed to encourage the examination of experiences or materials rather than taking them for granted. The questions require students to query underpinning beliefs, values, assumptions and evidence, and to be creative in their outlook upon alternative options, conclusions, perspectives and views.

The final part of this paper examines the themes derived from the above consideration of the literature in the context of an exemplar undergraduate subject, and offers a rubric for the assessment of a reflective report.

VI ASSESSING REFLECTION — A CASE STUDY

Evidence (LWB432) is a compulsory final year undergraduate law subject at the Queensland University of Technology, which builds upon foundational knowledge acquired in criminal law and

⁹² Bourner, above n 21, 270.

develops advocacy skills that may be extended in the elective skills subject, Advocacy (LWB356).

In 2008, a compulsory court report was embedded and assessed in Evidence. In semester two 2008 and semester one 2009, it was formatively assessed. Students were referred to the Queensland Courts Daily Law List website and required to physically attend a Queensland court on one occasion to observe a real world criminal trial. They were also required to complete a court report using a template provided to them. The court report template required students to record the citation, party names, file numbers, type of proceeding, originating court, where and when the case was delivered, judge, order, catchwords, counsel and solicitors for the applicant, and counsel and solicitors for the respondent. The purpose of the exercise was to enhance student understanding of the stages in the trial process — that is, examination-in-chief, cross-examination and re-examination — and to observe counsel asking questions of witnesses and objecting to an opponent's questions during the stages of the trial process. The court report also prepared students for an objections exercise, which was a sequenced summative assessment item.

Overall, student and staff feedback about the court report was that it 'promoted real world learning', was 'authentic', 'a worthwhile process' and 'a positive, practical step'. However, student feedback also suggested that some students had not actually attended the courts and had allegedly fabricated the content of their court reports, using court transcripts available online. Other students commented that the court report involved considerable time and effort, and that it should be summatively assessed to reflect its workload.

In semester two 2009, the court report was made a summative item of assessment worth 20 per cent. Students are now required to reflect more fully on their observations. The purpose of the court report in its new format is to make students more familiar with attending court, and to encourage students to make connections between what they learn in the classroom and what actually happens in practice. Whilst in court, the students are required to complete a one-page (double-sided) court report template, which directs their attention to the role of the judge and counsel, competence and compellability of witnesses, special measures put in place to make the process less stressful for certain classes of witnesses, the order of proceedings and different types of evidence.

The assessment tasks in Evidence can be mapped against Kolb's experiential learning cycle (Figure 1 above). Students begin the cycle at 'abstract conceptualisation' when they are provided with the abstract concepts of evidence and the trial process via lectures, tutorials and readings, as well as Resource 1 (above) and an explanation of the criterion-referenced assessment rubric. Students engage in 'active

experimentation' when they complete a trial process exercise where they plan questions that they would ask their witness in examination-in-chief, their opponent's witness in cross-examination and their witness in re-examination, as well as how they would object to their opponent's questions and/or answers where appropriate. Attendance at a criminal trial is the 'concrete experience', and the 'reflective observations' take place when the students observe the trial process and reflect on this in the court report. If students encounter any inconsistencies between what they observe in practice and what they learned in the classroom, they are encouraged to review their lecture notes and other resources to resolve these disparities, returning to 'abstract conceptualisation' and thus closing the experiential learning cycle.

The court report requires students to reflect on what they observed in the court room on a one-off occasion as compared to what they have learned in the classroom during the semester. Unlike a reflective diary that is completed on a weekly basis, the court report does not require regular reflective entries, and as such may be viewed as an assessment task requiring a basic level of reflection. In any event, the court report facilitates reflection and is a useful assessment item in such subjects. The rubric for assessment of the court report is set out below in Resource 2.

The criterion of reflection skills is listed in the left hand column of the rubric and is unpacked in the remaining columns. In accordance with the views of Pee et al and Sumsion, written communication has not been listed as a separate criterion for assessing reflection because there may be no positive correlation between communication skills and reflection skills.⁹³ Written communication is implicit in the reflection skills criterion, and is particularly noticeable when the performance descriptor for excellent reflection skills is compared to poor reflection skills; that is, a critical reflector's writing style is analytical, personal and contextual, and a non-reflector has a very descriptive and impersonal writing style.

The descriptor for the poor performance standard in the rubric largely correlates with Wong et al's non-reflector and Moon's view of descriptive writing. The satisfactory performance standard has been based on Wong et al's conception of reflector and Moon's view of descriptive reflection. The good to very good performance standard shows an incremental development from the satisfactory performance standard and is consistent with Wong et al's view of reflector and Moon's view of dialogic reflection. The excellent performance descriptor is grounded in Wong et al's and Moon's label of critical reflector and critical reflection, respectively.⁹⁴ It also

⁹³ Pee et al, above n 70, 583. Sumsion, above n 53, 124.

⁹⁴ Wong et al, above n 25, 53–4; Moon, above n 15, 97.

takes into account Stein's categorisation of critical reflection into dispositional, contextual and experiential.⁹⁵

Resource 2: Criterion-Referenced Assessment of Reflection

	Poor	Satisfactory	Good to Very Good	Excellent
Reflection Skills	Merely sets out what happened.	Sets out what happened and why it happened.	Makes logical connections between new and previous knowledge.	Questions assumptions and values underpinning previous knowledge. Solves inconsistencies between expectations from previous knowledge and the experience in practice.
		Approaches the experience and its rationale from a personal perspective.	Adapts or applies previous knowledge to a real world experience.	Shows an awareness of contextual considerations (historical, social, cultural, political).
		Follows practices because of habit.	Considers alternative options or solutions.	Uses literature and previous knowledge to support alternative options or solutions.
		Identifies strengths in previous understanding.	Identifies strengths and weaknesses in previous understanding.	Identifies strengths and weaknesses in previous understanding and suggests a way forward for dealing with weaknesses.

Identifying gaps in understanding and closing those gaps is important to reflection, and this has been recognised in the rubric in Resource 2. Even if a student identifies a weakness in their understanding in the trial process, if they can also put forward a strategy for resolving their weakness, they may receive an excellent mark for reflection skills. The 'excellent' box for reflection skills

⁹⁵ Stein, above n 49, 3.

also prompts students to question their assumptions and values underpinning their previous knowledge, an important feature of reflection.

The brief rubric presented here is one example of a criterion-referenced assessment grid used for assessment of a reflective exercise, and is offered to other academics as a useful starting point.

VII CONCLUSION

This paper has drawn on the literature to suggest a rubric for the assessment of a reflective report which reinforces the view that reflection requires purposeful thinking, consideration of alternative options or solutions and development of understanding. While the rubric has been designed specifically for the assessment of a reflective court report, it is suggested that it is transferrable to the assessment of other types of reflective practice both in law and in other disciplines. The rubric encourages students to shift their thinking patterns and realise the value of revealing weaknesses and identifying ways to address them. Critical reflectors take a deep or active approach to learning. The rubric provided in this paper provides a useful framework for assessing reflection skills and will be a useful springboard for academics in law and in other disciplines seeking to embrace the assessment of reflective practice.